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CURRENT TOPICS

Collusive Tendering and the Monopolies Commission

THE Board of Trade announced on 29th October the terms of reference of the Monopolies and Restrictive Practices Commission's inquiry into common prices and collusive tendering, and invited any person or organisation wishing to offer evidence to write to the Secretary, Monopolies and Restrictive Practices Commission, 8 Cornwall Terrace, Regent's Park, London, N.W.1. By the terms of reference, the Commission are required to report on the general effect on the public interest of actions taken in the course of carrying out (i) agreements between two or more persons carrying on the business in the United Kingdom of supplying goods in the United Kingdom which have the effect of restricting or limiting the freedom of the parties to the agreements or any of them with respect to the prices at which they are to supply, offer to supply or tender for the supply of goods in the United Kingdom; (ii) agreements between two or more persons carrying on the business in the United Kingdom of applying any process to goods which have the effect of restricting or limiting the freedom of the parties to the agreements or any of them with respect to the prices at which or the charges for which they are to apply, offer to apply or tender for the application of that process to goods. Expressly excluded from the terms of reference are (i) the practices of exclusive dealing, collective boycotts, aggregated rebates and other discriminatory trade practices which were the subject of a report dated 13th May, 1955, under the general title of Collective Discrimination (Cmd. 9504); (ii) actions taken in the course of carrying out (*a*) agreements of the kind referred to above in so far, but only in so far, as they provide for individual resale price maintenance; (*b*) agreements between a particular supplier of goods (whether an individual, a partnership or a body corporate) and the purchaser or owner (as the case may be) of those goods to which no other persons are parties; (*c*) agreements between a particular person carrying on the business of applying a process to goods (whether an individual, a partnership or a body corporate), and the customer for whom or to whose order the process is applied and to which no other persons are parties; (*d*) agreements to which the only parties are two or more inter-connected bodies corporate within the meaning of the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, or two or more persons carrying on business in partnership with each other. The agreements to be investigated include any agreements or arrangements whether or not they would be legally enforceable.

The National Register of Archives

AN account of the first ten years of the life of the National Register of Archives, by Sir RAYMOND EVERSHED, Master of the Rolls, appeared in two leading articles in *The Times* of 31st October and 1st November. There had been collected in that time, Sir Raymond wrote, some 8,000 reports on

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local and private collections, and an index of over 2,350 names of individuals mentioned in the reports, with corresponding topographical and subject indices as well. Lord Greene's Committee of 1943 secured the establishment of the National Register of Archives with a Registrar and an Assistant Registrar. The local and private archives with which it is concerned include the records of all kinds of local authorities, county councils, urban and rural district councils and parishes, diocesan and other ecclesiastical records, records of universities, colleges, schools, hospitals and other semi-public institutions, professional records, and muniments of private individuals. In 1948, bulletins were first published, and they are now widely distributed all over the world, sixty-eight copies being sent twice annually to libraries and universities in the United States alone. Sir Raymond concluded with a tribute to the "extraordinary success achieved during the ten years of the Register's life in bringing to light, and recording in a form convenient and accessible to students, the existence, location and contents of the rich store of local and private archives which we are fortunate enough in England to possess." He hoped that owners of records would help the Register to "preserve for scholarship and posterity an immensely valuable heritage."

Proving a Foreign Marriage

THE use in English proceedings of the public registers of a foreign state, or of certified copies thereof, in order to prove the facts recorded therein is a complicated study, and not one particularly rewarding to the general practitioner. It cannot be said that any of the standard works on evidence presents a lucid account enabling anyone faced with this occasional problem to be sure what copies prove themselves and what copies require to be supported by the testimony of a witness with expert knowledge of the legal system in question. Among the more common situations, however, when a solicitor has to get somewhere near the bottom of this mystery is that which arises when a marriage which has taken place in Belgium or in France has to be proved in matrimonial proceedings. In this instance, if the appropriate document can be obtained, it is unnecessary to incur the expense of adducing expert evidence, as a practice direction of the 16th May last reminded the profession. But there must be available such a certificate of the marriage as is comprehended within the difficult wording of the appropriate Order in Council—S.R. & O., 1933, No. 383, in the case of Belgium, and S.R. & O., 1937, No. 515, for France (which includes Corsica and Algeria). The former order is more straightforward than the latter, and *North* v. *North and Ogden* (1936), 52 T.L.R. 380, shows it in smooth operation. A peculiarity of the requirements in regard to France, is that to make a French certified copy *prima facie* evidence of the contents of a register, the certificate must have been issued not more than twelve months before the date on which it is tendered to the court. KARMINSKI, J., had occasion to remark on this in *Motture* v. *Motture* [1955] 1 W.L.R. 1066; *ante*, p. 709. So far as Belgian certificates are concerned, the limitation to copies certified within the past year applies only if payment out of court is required or if it is sought to establish a title to property, contingencies not impinging on the normal course of a divorce case.

Homosexuality Laws

A JOINT committee representing the Institute for the Study and Treatment of Delinquency and the Portman Clinic, a psychopathic clinic founded by the institute and later taken over by the National Health Service, has presented a memorandum to the Departmental Committee on Homosexuality and Prostitution, based partly on an investigation into 113 homosexual offenders discharged from the clinic during the two years 1952–53, and partly on a question paper submitted to thirty-four members of the scientific staff of the institute and the Portman Clinic, "who both in clinic and in private practice have extensive and first-hand experience of the many problems connected with homosexuality." A recommendation that homosexuality between consenting adults should not be regarded as a criminal offence was adopted by thirty-three out of the thirty-four correspondents. Such acts should be regarded as offences, it is suggested, if they involve breach of public decency, violence, rape or seduction. It is further recommended that homosexual acts between consenting minors should not be regarded as offences unless they involve breaches of public decency, seduction or violence. This was supported by twenty-nine correspondents. A recommendation that acts between adults and minors should be regarded as offences on the part of the adult if the minor is below the age of consent was supported, with certain qualifications, by thirty-two correspondents.

Administrative Law

VOLUME II, No. 2, of the *British Journal of Administrative Law* admirably continues to supply the need for a periodical survey of the work of the administrative tribunals and of the trends of thought on the many issues which they raise. A brief leader in that issue refers to the recent Government proposal to set up a new tribunal to deal with the licensing of monopolies, and comments that a new and vital field of administrative law is gradually being opened up. The official view, the writer says, where it is necessary to present it, should be stated in the ordinary course of the hearing "with the least practicable number of special privileges granted to the governmental representatives." The issue also contains an article on "The Lands Tribunal" by the President of the Lands Tribunal, Sir WILLIAM FITZGERALD, one on the "T.U.C. Machinery for Disputes between Unions," by Mr. RAY BOYFIELD, Secretary of the Organisation Department of the Trades Union Congress, and one on "The British Motor Trade's Tribunal," by Mr. K. C. JOHNSON-DAVIES, Secretary of the British Motor Trade Association. A unique feature of the Journal is its Administrative Law Reports, with full statements of the facts and decisions in each reported case in the Industrial Court, the Civil Service Arbitration Tribunal, the Lands Tribunal, the Transport Tribunal and other tribunals, as well as short summaries of decisions in the courts.

The Grotius Society

AT the Grotius Society's conference on 29th October Dr. J. MERVYN JONES read a paper on international law and politics. Mr. GEOFFREY DE FREITAS, M.P., analysed the various provisions of the preliminary draft of a multilateral convention on extradition adopted last year by the Council of Europe Assembly. At a dinner in the Middle Temple Hall on the previous evening to mark the fortieth anniversary of the society's foundation, Sir REGINALD MANNINGHAM-BULLER, Q.C., M.P., the Attorney-General, said that, although the sanctions of international law differed from those of municipal law, an increasing respect was being paid to it by nations in their mutual relations. That law was still in its youth, but its codification was steadily proceeding. The International Law Commission had produced this year a convention on the "Régime of the High Sea." Much remained to be done and the Grotius Society had helped and must continue to help towards this codification.

PROVIDING AGAINST CONTINGENCIES

"OH yes, sir, Mr. Smith called yesterday while you were out playing golf with Mr. Warburton, and asked if you would draw up his will for him. Just a short document, yourself executor, and everything to his wife. Said he would look in late this afternoon to sign it." The instructions, simplicity itself; but what a pack of possibilities lurk in the undergrowth to turn the testator's wishes into a mockery of what he wanted.

The problem which first besets every solicitor on receiving such instructions is to know whether to take them at face value. If the estate is small and the client not anxious to spend even the nominal fee charged, one is perhaps justified, after explaining the comprehensive cover against the future which a full will could provide, in letting the client execute a two or three clause will of the "Mr. Smith" type. To say that the solicitor should not look to his reward is not a fair comment here, as the client still regards himself as overcharged, whatever the fee, if he asks for a short will and he gets a long and comprehensive one.

The appointment of an executor and trustee is not usually a difficulty. Some clients arrive asking for a trust corporation such as one of the banks; considering the extent of their advertising I always feel justified when I point out that they charge for their services and employ a solicitor as well. The alternative is the appointment of at least two individuals. In many ways this can be more satisfactory, particularly where lengthy trusts are involved and from time to time the beneficiaries require a point to be stretched in their favour. It is then that the family solicitor, knowing all the people concerned, can sum up the chances and do what a bank or the Public Trustee would say was impossible.

Most testators are or have been married, and the only will I have ever drawn in contemplation thereof was in my own family. In providing for every possible contingency in a will, one's own future marriage in general terms seems to be the only thing that cannot be covered. Few people seem to realise the revocational power of matrimony, and technical perfectionists will not find "My Cousin Rachel" as exciting as laymen will.

Many a testator drawing his own will has said: "I give everything to my wife, and after her death I want it to be given to my children equally." Usually it seems that he wanted his wife to have an absolute gift, and her to make a will in favour of the children. The result, however, is that the widow lives on a pittance of income for years, and the children receive only moderate legacies after they have established their own homes.

The simple will gives everything to the wife absolutely. "But, Mr. Smith, what do you want if she dies before you, or if you are both killed as a result of, say, a car accident?" It is only then, when he is presented with the possibilities, that he really begins to think. The fair alternative will be to leave it to the children equally, if necessary on a trust with wide discretions for investing the capital, and also for paying sums on account of capital to the children for their benefit or advancement. If the discretion is too narrow it will cause hardship, while if it is particularly wide the only danger (from the beneficiaries' point of view) is that the trustee may give them too much too soon. A professional man is expected to be reasonably level-headed in such matters, and should not shrink from accepting the responsibility involved.

The common accident may not cause both the testator and his wife to die at once. It is frequently the case that one of them may live for perhaps a week after the other. In the absence of any provision the estate will pass and pass again, and the Inland Revenue Commissioners will stop for another cup of tea. It is quite unnecessary. Probate cannot be obtained until the sixth day after the papers are lodged and the executor must first assess the estate and pay duty. No harm and much good can be done by making the widow's share contingent upon her surviving the testator by, say, fourteen days. She will, of course, have all the usual household expenses and others too, so an immediate legacy of sufficient size to carry her over this period is a useful corollary to the deferred main slice; in any case, if duty is to be payable on this, it cannot be very much.

But double duties do not arise only in this type of case. Pearson (*Re* [1920] 1 Ch. 247) and Scott (*Re* [1901] 1 K.B. 228) both have cause to remember s. 33 of the Wills Act, 1837, which provides that a gift to the testator's child shall not lapse if the child predeceased the testator leaving issue; the child's life is deemed to be prolonged a fraction beyond that of the testator. The remedy here is to provide expressly that the share of any child dying before the testator leaving issue shall go to such issue, if more than one, then equally; and a remainder over if such issue fail to attain twenty-one years. It is all too easy to leave a share of residue outstanding in the event of perhaps only one death, and that causes an intestacy of that share, thus throwing the other provisions and proportions of the will out of gear.

Provision that legacies should be paid free of all duties which may be or become payable upon or by reason of the death is still quite a common safeguard in wills even though legacy duty (as opposed to estate duty on realty) is no longer levied. There are those who for economic or political reasons would like to see estate duty wholly replaced by legacy duty, but from a practical point of view it seems unlikely. Still, the extra fifteen words do no harm. In this connection it is worth mentioning gifts *inter vivos*, which, of course, bear their own estate duty. I remember one case where the testatrix gave a legacy by will, but subsequently revoked it by codicil as she paid it during her lifetime. She died within five years. The beneficiary, having been in dire need of it, had naturally spent it all, and it was only with considerable difficulty that the three residuary charities could be persuaded to pay the duty. The moral is, when revoking a legacy for such a reason, provide that the duty, if it is payable at all, is nevertheless paid out of the estate. Such a provision indeed might well be inserted in wills as a matter of course; it certainly confirms the intention of every ordinary testator.

Finally, one might consider the non-financial clauses of a will, the key to which is in the question, "Why should a man with no estate make a will?" These are the directions for cremation, guardianship of children, gift of the body to a teaching hospital or eyes to an eye bank under the Corneal Grafting Act, 1952 (still far too little done), the continuing of a chain of executorship, the vesting of a Rent Acts tenancy, and I expect you can think of some more. The Old Dog's advice was "Sleep on it." Mr. Smith, I shudder for you.

N. P.

Mr. E. J. NORMAN has been appointed Chief Inspector of Taxes by the Board of Inland Revenue with effect from 16th January, 1956, in succession to Sir Alfred Road, C.B.E., who is retiring from the public service.

The Queen has been pleased to approve the appointments of Mr. Justice P. C. HUBBARD, Mr. Justice M. G. ABBOTT, Mr. Justice G. L. JOBLING and Mr. Justice A. W. BELLAMY to be Judges of the High Court of Lagos.

CORROBORATION IN DOMESTIC PROCEEDINGS

In matrimonial proceedings before justices there is no rule of law that corroboration is essential before an order can be made under the Summary Jurisdiction (Separation and Maintenance) Acts. As solicitors practising in magistrates' courts well know, these courts must interpret the law in the light of the decisions of the superior courts and, as in the High Court, corroboration is desirable and always to be looked for. Magistrates' courts should follow the practice of the Divorce Court in not acting on the uncorroborated testimony of either party (*Forster* v. *Forster* (1910), 54 SOL. J. 403). This principle is supported by *Joseph* v. *Joseph* [1915] P. 122, in which a finding of desertion was discharged where the wife was the only witness in support of her complaint and her husband denied the charge. The wife had issued a summons for desertion which was dismissed, and later issued a second alleging the same complaint. A preliminary objection of *res judicata* was overruled, the wife alleging fresh facts as to marital relations since the dismissal of the first summons. Her statement was uncorroborated, but the justices found desertion proved. On appeal, it was held that the court could not act on the uncorroborated evidence of the wife as to there having been subsequent marital relations between the parties. In *Williams* v. *Williams* (1932), 76 SOL. J. 461, Lord Merrivale, P., said: "In a variety of cases in the summary jurisdiction this court has laid down the necessity of looking for corroboration. . . . It is obvious that in matters of the greatest consequence between man and wife it would be a dangerous thing to act upon evidence of one party unsupported by a body of facts."

The absence of corroborating witnesses should be satisfactorily accounted for (*Judd* v. *Judd* (1907), 23 T.L.R. 538; 51 SOL. J. 500). If the justices properly direct themselves as to the dangers of acting upon uncorroborated evidence and the desirability of having such corroboration, as stated at the beginning of this article, the latest authorities, dealt with below, support the view that the justices can act without finding corroboration and accept evidence without it.

It is impossible to give an exhaustive meaning to corroboration, but guidance can be found in the words of Lord Reading, C.J., in *R.* v. *Baskerville* (1916), 60 SOL. J. 696, when he said: "Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it."

Evidence of adultery is seldom accepted without corroboration. In *Fairman* v. *Fairman* (1949), 65 T.L.R. 320; 93 SOL. J. 321, it was held that the evidence of the participator in the alleged adultery was not corroborated and should not therefore be accepted and that adultery had not been proved. This was an appeal from justices, and the basis of the decision appears to be that the justices had not directed themselves properly as to the need to look for corroboration of the evidence of the participator, who is in the nature of an accomplice. The Court of Appeal dealt with the position in *Galler* v. *Galler* [1954] 2 W.L.R. 395; 98 SOL. J. 176, an appeal from a divorce decree, the commissioner in his judgment having given no indication that he had directed himself that, where evidence was given by the participator in the adultery alleged, the court should be very slow to act on it. Hodson, L.J., said that it is not the law that the court cannot act on the evidence of a person in the position of the witness without corroboration, but it is the law that it is unwise so to do, and that juries must be directed that it is unsafe to act on uncorroborated evidence of this nature, although they are at liberty to do so if they feel sure. He saw no reason to depart from the view which he thought had always been held, that an adulterer who gives evidence of his own adultery is in the same position as an accomplice in a criminal case. The dangers of relying upon his or her unsupported evidence are great, and a warning should be given.

Unnatural sexual practices such as sodomy can amount to persistent cruelty, and in this type of case in magistrates' courts the question of corroboration must inevitably arise. In *Statham* v. *Statham* (1929), 45 T.L.R. 127; 72 SOL. J. 847, Russell, L.J., said: "The offence of sodomy is of so serious a nature that a rule has grown up that in criminal trials for certain offences (which include sodomy) the judge must warn the jury of the seriousness of convicting, in the absence of some evidence to corroborate the story of the other party to the act alleged. If no such warning has been given, a conviction will be quashed. Notwithstanding the warning, the jury may convict, but the warning must be given or the conviction will not stand. Is this rule to be confined to criminal trials for the offence? I can see no reason why it should be so confined." If, *prima facie*, the acts can only have happened with the consent of the complaining spouse, the jury should be warned that it is unsafe to find the offence proved without corroboration. Justices must direct themselves on similar lines.

In *D.B.* v. *W.B.* (1935), 79 SOL. J. 216, it was emphasised that the court demands that, when a matrimonial offence, whatever it is, is charged, if possible the evidence of the spouse making the charge should be corroborated, and not least with regard to matters of the sort charged in that case (sodomy and sexual perversion) about which, if there was not a reasonably strict rule in this respect, one spouse would be so easily at the mercy of the other in relation to things which from their nature must happen in private. But when that has been said it is admitted that the necessity for corroboration is not an absolute rule of law. Justices should direct themselves, just as a judge should direct a jury, that it is safer to have corroboration, if possible; but when that warning has been given and given in the fullest form, then there is no rule of law which prevents the tribunal finding the matter proved in the absence of corroboration.

D.B. v. *W.B.*, *supra*, was applied in *Davidson* v. *Davidson* [1953] 1 W.L.R. 387; 97 SOL. J. 156. *Statham* v. *Statham*, *supra*, was also applied, but apart from the justices directing themselves properly as to the desirability of corroboration, it was stated in *Davidson* v. *Davidson* that, if sodomy be found after such a direction, then the justices must consider the possibility of acquiescence, there being an allegation of cruelty based upon acts to which the wife had, *prima facie*, assented. However, the assent of a wife, especially a young wife, cannot be true assent if the acts are forced upon her, either literally by overwhelming force or by fraudulent persuasion that it was all right and only one of the normal incidents of married life.

The latest reported case on this subject appears to be *Lawson* v. *Lawson* [1955] 1 W.L.R. 200; *ante*, p. 167, a decision of the Court of Appeal where *Statham* v. *Statham* was distinguished. In this case, a summons by a wife against her husband before justices alleged persistent cruelty, the substantive allegation being that the husband insisted on his wife committing acts of sodomy with him. The justices found that the wife, although submitting to the acts in

question, was not a consenting party. They directed themselves as to the desirability of, but not the necessity for, corroboration of the wife's evidence. They accepted the wife's story as true and were of opinion that it was corroborated in certain respects by other evidence given and found the husband guilty of persistent cruelty. On appeal, the Divisional Court affirmed the justices' decision. The Divisional Court was of opinion that the justices, having correctly directed themselves as to the desirability of, but not the legal necessity for, corroboration, were entitled to accept the wife's evidence, even if the matters relied on did not amount to corroboration. The husband appealed, and in his judgment Lord Goddard, C.J., said that the justices had found the wife was not a consenting party. That meant that she, being forced by her husband, submitted to the acts which were done, but that she was not a willing party to them. That seemed to remove her from the category of an accomplice. If the justices came to the conclusion that these acts had been committed upon the wife, then whether she was an accomplice or not, provided she was not a consenting party in the sense that she voluntarily allowed her husband to satisfy himself in this unnatural way, his lordship did not see how it could be said that she was not assaulted and was not entitled to say that these were acts of cruelty committed upon her, or, at any rate, attempted acts of cruelty, which she must have resisted and, for that reason, the husband could not consummate them. That, surely, would be a case of persistent assaults upon her. The Lord Chief Justice dealt with the merits of the corroboration which the justices found and referred to *Statham* v. *Statham, supra*, saying that the great thing to remember about that case was that it depended upon very peculiar and special facts and there was no doubt there that the wife readily consented, which was very different from the present case where the woman, although she may have submitted, was not a consenting party. The appeal failed. Hodson, L.J., agreed and said: "There has been some confusion of thought in this case, at any rate in argument, because the argument has been conducted in this court on the footing that the wife was an accomplice, involving, to my mind, that she was what the magistrates found she was not, namely, a consenting party . . . I think it was open to the justices, on the evidence, to find as they did, and as the Divisional Court agreed they were entitled to find, that this woman was not a consenting party, and that the acts were inflicted upon her against her will. In those circumstances, no particular rule relating to an accomplice applies. *Statham* v. *Statham* does not, however, assist the husband, because that was a case in which the wife alleged sodomy against her husband and an insufficient direction had been given to the jury who tried the case. The facts in that case clearly showed that . . . she consented . . . and no compulsion of any kind was put upon her. . . . That is not this case. The law is, as I understand it, that in cases of cruelty, just as much as in other sexual cases, corroboration is looked for. That does not say the court cannot act without corroboration. Of course, in a case of this kind of an unnatural offence, one looks more anxiously for corroboration." One of the arguments for the husband was that, because the justices found sodomy and also, in their findings, found corroboration where none existed, that must stultify their decision. The court did not accept that.

In *Kafton* v. *Kafton* (1948), 92 SOL. J. 154, it was held that the requirement by the court of corroboration where cruelty is alleged is merely a matter of practice, and not a rule of law. It has never been decided that the court is not entitled in a proper case, where it is in no doubt where the truth lies, to act on the uncorroborated testimony of the petitioner. The need of corroboration is necessarily greater in an undefended case than in a defended case where the evidence of the petitioner, though uncorroborated, is tested by cross-examination and can be measured against the evidence given on the other side. *Per* Tucker, L.J.: "I do not desire to be understood as saying anything to weaken the requirement that corroboration in these cases is highly desirable, but there may be cases in which the court feels that it can safely act without corroboration." J. V. R.

A Conveyancer's Diary

SALE BY A SURVIVING JOINT TENANT

THIS is a question which is frequently discussed but, as a reader has recently written to me, usually from the point of view of the purchaser: he wishes me to discuss it from the point of view of the vendor. The tenancy may have been severed in any one of a number of ways—a contract of sale of the deceased joint tenant's share, for example, or a covenant to settle or an assignment of that share without the knowledge of the survivor—and such severance would not then be discoverable by any ordinary process of search on behalf of the purchaser at the time of the purchase. In Emmet on Title (14th ed., p. 325) the advice is given that the safest course is to appoint a new trustee. But what, my correspondent writes, of the new trustee, especially if, as may frequently happen, he is the solicitor acting for the vendor. If he pays the whole of the purchase price to the survivor, though he may not know of any severance, if a severance has taken place he commits a breach of trust, and if he is a solicitor he is more likely to be held liable to make good the consequences than the beneficiary-trustee.

Two suggestions are made to deal with this situation. The first is that an indemnity should be taken by the solicitor trustee from the beneficiary trustee, and that as a matter of practice this should be included in an instrument other than the conveyance, as otherwise the new trustee cannot retain the instrument containing the indemnity. This is a possible answer, but very often a mere covenant of indemnity from the beneficiary trustee would be a poor protection, and if any indemnity is to be taken, I would suggest that an assurance company be approached and an indemnity policy obtained.

The second suggestion is that the surviving joint tenant should convey the property as beneficial owner and give the purchaser an indemnity against all liabilities to any owner of the deceased joint tenant's share in respect of the purchase price. It is pointed out that the legal estate in the property is without doubt vested in the survivor and would pass to a purchaser, and the only claim which could be made by a person claiming under the deceased joint tenant, on the footing that there had been a severance, would be a claim to a share in the proceeds of sale of the property, for on that footing the property is still held on a trust for sale. If, then, an indemnity is taken from the survivor, is not the purchaser in as strong a position as if he had paid the purchase money to two trustees?

I think that there is much force in this second suggestion, and indeed I think that my correspondent has, if anything, underestimated the strength of the surviving joint tenant's

position from the conveyancing point of view. If there has been no severance during the joint lives of the joint tenants, upon the death of one both the legal and the equitable interests in the property vest absolutely in the survivor. The Law of Property (Amendment) Act, 1926, inserted by way of addendum to s. 36 of the Law of Property Act, 1925, the words " nothing in this Act affects the right of a survivor of joint tenants who is solely and beneficially interested to deal with his legal estate as if it were not held on a trust for sale." Since *Re Cook* [1948] Ch. 212, it must be taken as settled that these words were added as an afterthought and that the survivor is entitled to convey as sole beneficial owner and not under the statutory trust for sale, if there has been no severance of the beneficial interest during the subsistence of the joint tenancy.

If there has been a severance, the ultimate position is not affected. This appears from an interesting note on this subject in Williams on Title (1st ed., p. 203, note (*k*)), which I will take the liberty of citing in full here. " If there has been a severance, the trust for sale will not be determined and title must be made under it. In such a case, after severance, the property is held under a tenancy in common, at least as to part if not as to the whole. It has always been assumed, however, that a purchaser who has no notice of a severance or of any act which could cause a severance, can accept the title of the sole survivor. It is thought this is so unless the doctrine enunciated by Wood, V.-C., in *Carter* v. *Carter* (1857), 3 K. & J. 617, at p. 639, and by Jessel, M.R., in *Mumford* v. *Stohwasser* (1874), L.R. 18 Eq. 556, at p. 563, that, if a trustee selling has notice of any interest, then the purchaser for value is affected by it whether or not he knows of it [applies to the case]. If this is the true view, then a purchaser would not be safe in taking a conveyance from a sole survivor who knew of a severance of the joint tenancy. It is thought, however, that the doubt upon this expressed in *Bailey* v. *Barnes* [1894] 1 Ch. 25, at p. 34, is well founded and that reliance may be placed on *Pearce* v. *Bulteel* [1916] 2 Ch. 544, where it was held that, if a purchaser has good reason to believe that a trust is at an end, he will not lose the protection of a purchaser for value without notice."

This conclusion is, in my opinion, amply justified by a reference to the authorities mentioned in this note. The cases of *Carter* v. *Carter* and *Mumford* v. *Stohwasser* were concerned more with the position of an ulterior equitable incumbrancer, who gets in the legal estate, as against a prior equitable incumbrancer, than with the position of what may be called a straight purchase for value of an absolute interest in property without notice of any prior equitable interest affecting the property; and even then there is a reference in the particular passage of the judgment of Sir George Jessel to value which is all on the side of a purchaser of a legal estate without notice of equitable interests. The reference to *Bailey* v. *Barnes* is a reference to the judgment of the Court of Appeal delivered by Lindley, L.J., where the learned lord justice said that the doctrine of constructive notice " must not be carried to such an extent as to defeat honest purchasers," and went on to mention the statutory construction of that doctrine by what is now s. 199 of the Law of Property Act, 1925 (some readers may recall that I had recent occasion to consider the effect of this section in connection with the doctrine of constructive notice as applicable to the equity of a deserted wife to continue in occupation of the matrimonial home—see p. 719, *ante*). And *Pearce* v. *Bulteel*, as the learned author of Williams notes, is a straightforward decision on a defence based on the principle of purchase for value without notice.

The elements of this principle are known to every law student: they are that there should have been (*a*) a purchase for value, (*b*) of a legal estate, (*c*) without notice of any equitable interest affecting the legal estate at the time of the purchase. In the case with which we are concerned, (*a*) can, of course, be assumed. As to (*c*), it can again be assumed that the purchaser has no actual notice of any equitable interest which may have been created by a severance of the joint tenancy. A simple inquiry may be addressed to the survivor, whether he has knowledge of any severance, and the answer being in the negative, no further inquiry is necessary: both the language of s. 199 and the cautionary words of Lindley, L.J., in *Bailey* v. *Barnes* indicate that, in the face of such an answer, the doctrine of constructive notice would not be applicable to affect with notice a purchaser from a vendor who himself does not know of any severance at the material time. The absence of knowledge of any severance on the part of the survivor also of itself displaces the possibility of the application to a case like this of the principle to which Sir George Jessel referred in *Mumford* v. *Stohwasser*, even assuming that the principle is capable of application at all to the case of a purchase for value of a legal estate by a purchaser until then having no interest in the property. And as for (*b*), it has never been disputed that a surviving joint tenant has the legal estate vested in him to dispose of as he thinks fit, and there is now the decision in *Re Cook* which, if one may say so, underlines what was already obvious.

To summarise what has been said, a surviving joint tenant who has no knowledge of any severance having taken place in the lifetime of the deceased joint tenant should be advised to sell as absolute beneficial owner and I think that a purchaser may reasonably be asked to accept the title without any indemnity from the vendor. If it should subsequently appear that a severance did take place, any person claiming under the severance could not reach the legal estate in the hands of the purchaser unless he could establish that the purchaser had notice of a severance having taken place at the time of the purchase—an impossible task in the assumed case. The claimant's rights will be limited to the proceeds of sale in the hands of the vendor. The expense of appointing a new trustee of statutory trusts will be avoided, and so also the expense of indemnifying such a trustee in a proper manner. Of course, while the current views on the proper conveyancing procedure in such cases continues to be based on statements such as that in Emmet, there will be some resistance from purchasers' solicitors, but a firm stand should usually dispose of any difficulty. In the last resort, I think that the surviving joint tenant's absolute title in cases of this kind could be forced on a purchaser.

" A B C "

SOCIETIES

At the annual general meeting of the MID-ESSEX LAW SOCIETY held at Brentwood on 28th October, the following officers were elected for 1956: President, W. Edwards (Dunmow); Vice-President, T. F. Hunt (Romford); Hon. Secretary, G. C. Green (Brentwood); Hon. Treasurer, F. N. Wingent (Chelmsford).

The next quarterly meeting of the LAWYERS' CHRISTIAN FELLOWSHIP will be held at The Law Society's Hall, Bell Yard, W.C.2, on 16th November, at 6.15 p.m. Tea will be available from 5.30 p.m. The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by the Bishop of Stepney on the subject of " Is not this the Carpenter ? "

Landlord and Tenant Notebook

REPAIR, IMPROVEMENT, OR BOTH?

THE right to increase the rent of a controlled dwelling by an amount corresponding to a percentage of the cost of improvement or structural alteration—6 per cent. originally, but 8 per cent. for any carried out since the passing of the Increase of Rent, etc., Restrictions Act, 1920—was left undisturbed by the Rent, etc., Restrictions Act, 1939. Many landlords have been glad of an opportunity of obtaining an 8 per cent. return; there is no differentiation by reference to the durability of the particular improvement or alteration. But the question, "What is an improvement?" is one which may prove difficult; and the latest contribution to our enlightenment, the decision in *Morcom* v. *Campbell-Johnson and Others* [1955] 3 W.L.R. 497 (C.A.); *ante*, p. 745, is a very useful one, the position having been examined by the court with great thoroughness.

In 1896, a block of flats was built in Westminster with the following features: (i) drainage by the "two-pipe system"; (ii) water stored in separate cisterns, one for each flat; (iii) an area higher than the damp course.

For the purposes in hand, it is hardly necessary to treat the first two features separately; it is true that the second-mentioned one had facilitated breaches of by-laws by tenants, but in both cases the pipes and installations had become worn out by 1952, *and* by then the systems had had their day: the landlords were advised to replace the drainage system by a modern "one-pipe system," which they did at a cost of £25,000, and to replace the smaller tanks by one big one at the top of the building. This was done, and cost £4,600. At the same time they decided to lower the area, the height of which permitted percolation liable to cause dry rot; and on this they spent £690.

They then sought, in the county court, declarations that the three works were improvements qualifying them for increases of rent. The county court judge held that they were; the Court of Appeal came to the opposite conclusion. The relevant provision (Increase of Rent, etc., Restrictions Act, 1920, s. 2 (1) (*a*)) runs: "expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs)."

Before examining the reasoning in detail, it may be convenient to say that, as regards the drainage and supply matters, Denning, L.J.'s view was that there was no "improvement" because everything went on as before; Hodson, L.J., and Morris, L.J., considered that the work was repair work and not improvement. As regards the area, Denning, L.J., regarded what had been done as the repair of a defect rather than the making of an improvement; Hodson, L.J., did not consider it an improvement of any of the dwelling-houses.

A good many interesting points were dealt with in arriving at these conclusions. Thus, is it possible to define "improvement" in the sense in which the section uses the word? It appeared that the county court judge had been guided by passages in the judgment of Jenkins, L.J., in *Wates* v. *Rowland* [1952] 2 Q.B. 12 (C.A.), citing, but not actually adopting, a definition proposed in argument: "work which does not merely restore the premises approximating to the condition that they were in when new, but does make the premises in some way better in kind than they ever were before." The weakness of this, as revealed by the course taken by the judgments in *Morcom* v. *Campbell-Johnson*, lies in the fact that the word "better" may raise the further question: "Better for whom?": and the test now suggested by Denning, L.J. ("so far as one can give any test in these matters"), is: if the work which is done is the provision of something new for the benefit of the occupier, that is, properly speaking, an improvement; but if it is only the replacement of something already there, which has become dilapidated or worn out, then, albeit that it is a replacement by its modern equivalent, it comes within the category of repairs and not improvements. The "something new for the benefit of the occupier" takes us further, but, it may be considered, not far enough: is it the particular occupier, a hypothetical occupier, a reasonable occupier, or who? The deficiency is supplied in the judgment of Morris, L.J.: "An argument was submitted to us in regard to the question whether the wording now in question should be approached from the point of view of the landlord or the tenant. Should improvement be considered from the point of view of the tenant? It is quite clear that the matter cannot be determined by considering what any particular tenant thinks. If the view of a tenant is being considered, it must be the view of a reasonable tenant. But it seems to me that the real inquiry must always be one to ascertain the true facts as to whether or not there has been an 'improvement'." The last sentence seems rather to dash one's hopes of clarification, but later on in the judgment we find: "It has, of course, always to be borne in mind that the very purpose of a dwelling-house is that it should be lived in, and if, under the machinery of this section, a tenant may be called upon to pay more, then it is natural to suppose that he will have to pay more because he is getting something which is an improvement of the dwelling-house in which he is to live, which, I think, contemplates an improvement from his point of view."

This reasoning is reminiscent of sundry other statutory provisions and authorities. The provision for excluding furnished letting from control, s. 12 (2) (i) of the Increase of Rent, etc., Restrictions Act, 1920, was amended by the declaratory provision in s. 10 (1) of the Rent, etc., Restrictions Act, 1923, insisting not only that the amount fairly attributable to the value of the furniture forms a substantial portion of the whole rent, but also on "regard being had to the value of the same to the tenant." For the purposes of compensation for improvements under the Landlord and Tenant Act, 1927, it has been held that it is the viewpoint of the tenant that matters: *Lambert* v. *Woolworth & Co., Ltd.* (*No. 2*) [1938] Ch. 883 (C.A.) (though in such a case an undertaking to reinstate may be required). The hypothetical tenant ("of the class likely to occupy . . .") made his appearance, in connection with repairs and dilapidations, in *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42 (C.A.).

While Hodson, L.J., early in his judgment, said that it was obvious that all repairs, if well done, involved some improvement, and that what had to be considered was whether any improvement went beyond repair, the learned lord justice appears to have considered the true test to be whether there has been a provision of something new rather than the replacement of what was there before. And the later part of the judgment virtually contrasts repair and improvement, reference being made to Buckley, L.J.'s "repair always involves renewal; renewal of a part; of a subordinate part," in *Lurcott* v. *Wakely and Wheeler* [1911] 1 K.B. 905 (C.A.) (also cited by Morris, L.J.). It may, I submit, be fairly observed that that judgment did not so much define "repair"

as contrast it with "renewal," the issue being whether a covenantor was obliged, by a covenant to repair, to rebuild a worn-out house; if the statement were treated as a definition, *Bishop* v. *Consolidated London Properties, Ltd.* (1933), 102 L.J.K.B. 257 would be an erroneous decision: in that case it was held, giving the word "repair" the meaning of "make fit to perform its function," that a landlord covenantor was liable for damage caused by the choking of a gutter covered by the covenant. There seems, indeed, no reason why "expenditure on the improvement or structural alteration of the dwelling-house" should not, despite Denning, L.J.'s "provision of something new," cover the removal of some obstructive beam or other matter; it may be that, happening to be a tall person, I write somewhat feelingly on this point—but I suggest that a six-foot tenant can be a reasonable tenant.

Possibly the conclusions reached could have been supported by reference to the proviso to s. 2 (1) (*a*): Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was *unnecessary* in whole or in part, and the court may make an order accordingly. The "in whole" shows that the scope is not limited to cases in which a landlord has spent more than the work ought reasonably to have cost, but, on one view of the meaning of "improvement," the proviso would be self-contradictory: how can any expenditure on improvement be "necessary"? The true interpretation, I submit (and *Morcom* v. *Campbell-Johnson* is consistent with this, though *Wates* v. *Rowland* is not), is that the replacement of something outmoded by something of a different kind (such as an earth-closet by a water-closet: *Free* v. *Callender's Trustees* [1927] S.L.T. 17) could not be impugned, but that if a landlord thinks he can obtain an 8 per cent. investment by adding, say, a garage, the increase might be successfully challenged.

The question arising out of the lowering of the area was, as mentioned, decided against the landlords because, according to Hodson, L.J., the flats did not, and no particular flat did, benefit. But it is useful to note that the court considered that there might be cases in which works carried on away from the dwelling-house itself might qualify a landlord for an improvement increase: Denning, L.J., instanced a common pipe, or a lift replacing stairs, and intimated that he would not be deterred by the fact that no express provision is made for apportionment.

R. B.

HERE AND THERE

THE LONG AND THE SHORT

ONE of the things that people like about British criminal justice is its promptness and its finality. Save where the proceedings result in an acquittal, it may perhaps be an exaggeration to say that the persons most nearly concerned share this enthusiasm in a very high degree. However, if their offence is murder their time for experiencing no enthusiasm is mercifully curtailed. In other cases, or where persons convicted of murder have been reprieved, any expressions of dissent from themselves or their friends and advisers takes the form of "alarms and discursions without" (as the old stage directions put it). They do not disturb the august decorum of the temple of British Themis. Still, we must recognise that this is part of the British way of life and death. It is not every country that shares our satisfaction in promptness and finality, and in the United States of America, for instance, determination and ingenuity are provided by the legal system with the means of fighting them both off for periods of indeterminate duration. What in England would be a battle for life may there quite easily develop into a long-drawn-out campaign or even a war of attrition stretching over a period of years. Here we would say that it was cruel to keep the prisoner in suspense. But the prisoners themselves and their legal advisers would say that while there's life there's hope and would not exchange their snakes-and-ladders system for our happy dispatch.

DEATH CELL CELEBRITY

ONE of the most extraordinary rearguard actions ever fought in the history of American criminal justice has just reached another critical stage. Seven years after his condemnation to death Caryl Chessman has been granted by the United States Supreme Court the right to a full hearing in the Federal District Court of California. He is now thirty-four years old and it was in 1948 that he was convicted of the capital offences of kidnapping and rape, being identified as "the Red Light Bandit" who attacked girls after forcing them into a car fitted with a red spot light. He freely and boastfully admitted that he was a gunman and a burglar who had spent half his life in gaol but he just as strenuously denied that he was guilty of the offences charged. He saw himself as a victim of circumstances revenging himself on a fate that had been his enemy, the poverty of the depression years, the brain fever that had robbed him of the joys of music by making him tone deaf. These, according to him, had destroyed the "warm and glowing creative urge," the gift of his beloved parents. But through his conviction and condemnation fate ironically brought literary fame and fortune. He refused to accept legal aid from lawyers appointed by the court and instead worked out his own defence. He buried himself in text-books and taught himself the law. The trial came and the jury convicted him. Since then he has lived in the death cell in Quentin Gaol. His advent there was only the beginning of a new life in the practice of his new-found art. Unassisted he drafted and filed seven appeal briefs, five petitions for a stay of execution, four petitions for certificates of probable cause to appeal, four for rehearings, four for writs of certiorari, four for writs of habeas corpus, besides other miscellaneous documents amounting to a wordage of almost half a million. Once he was within three days of execution, another time only twenty-four hours. He came close to death again last July when his execution was fixed for the 15th. Once again he cheated the last enemy. Meanwhile he had produced an autobiography, "Cell No. 2455, Death Row," a literary curiosity which sold half a million copies, formed the basis of a film, was translated into a dozen foreign languages and brought him $50,000. It also brought him an enormous fan mail and the love of a lady who will marry him if he is eventually released. Overwhelmed by these unexpected consequences, the prison authorities refused permission for the publication of his second book, "Trial by Ordeal," and impounded the original manuscript. A carbon copy was smuggled out. For his appeal to the Supreme Court he enlisted legal aid for the first time. They will also assist him before the Federal Court. It will be the last battle.

NO END FOR DOMINICI

MEANWHILE in France the Dominici case drags its slow length along. It has reached a climax only to decline into utter inconclusiveness. As the original cause of a war gets forgotten in the intricacies and exigencies of the conflict

so the murder of the Drummond family has been completely overlaid by the formless intricacies of police and judicial procedure. More than three years have passed since 5th August, 1952, when they were found murdered by the roadside at Lurs. Very soon it will be a year since the aged patriarchal peasant Gaston Dominici was sentenced to death at the Digne Assizes for the crime. That was on 28th November, 1954, after a ten-day trial full of all the dramatics which make a French court of law with its police guards and its Press photographers so very different from our own. It has been said that to attend a French trial is like going to the theatre, while to attend an English trial is like going to a religious service. The performance at Digne was dominated by the rugged old patriarch in the dock, following the evidence with the closest attention and always asking the most pertinent questions of the day. The death sentence was the climax of two years of exhaustive and exhausting police investigations carried on in the French manner in the full glare of publicity—hypothetical re-enactments of the scene, accusations made and retracted, a confession by the accused made and repudiated. But with the quarry run down, public opinion still remained uneasy. Execution was respited. In January a fresh judicial inquiry was ordered. In June it was initiated. Members of the Dominici family have been plied with hundreds of fresh questions. Old Gaston Dominici himself has been submitted to further interrogations. This month he has again been confronted with his sons who had given evidence against him. There were, said the investigating magistrate, "fireworks but no results." The old man of seventy-seven was still game enough to grapple with the magistrate and shake him. "Go on, kill me," said the official. "That will make a fourth victim. It will also show that you are capable of killing in a moment of anger." But things did not proceed to so conclusive a demonstration. One feels now that the case never can reach a conclusion at all. The ground has been too thoroughly trampled over.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Price of House Payable in Instalments without Interest

Sir,—With reference to the Points in Practice inquiry in your issue of 29th October, headed "Mortgage—Assignment of Lease and Mortgage back to Vendor without Interest," it may interest you to know that in Volume 18, No. 3, of the *Conveyancer and Property Lawyer*, there are precedents for the sale of a freehold house where the purchase money is intended to be paid by instalments, without interest. No doubt these precedents could readily be adapted to the case of an assignment of a leasehold house.

MAW, REDMAN & MORFITT.

Hull.

Conveyancing Costs

Sir,—The point raised by Mr. Warburton is a perfectly sound one, but in my opinion it will never be solved by altering the scale for unregistered land. The weakness of his case is his constant reference to suburban houses, but those of us who practice in the country well know that the scale frequently provides inadequate remuneration for the work involved.

Cases leap to the mind of sales for, say, £2,500 or so of smallholdings, the titles of which start with home made wills creating strict settlements perhaps as long ago as the nineties, and in which every penny of the £45 is bitterly earned. Equally, of course, one is half ashamed to pocket £105 for acting for both parties in the sale of No. 10 High Street for £3,000.

In the case of registered land, the amount of work involved is fairly constant, and some sort of scale is the proper way of charging. Indeed the object of registration would, to the layman, be largely lost if that were not so. But in the case of unregistered titles, what is the objection to our charge being on the present Schedule II basis? No reasonable client begrudges his solicitor a fair charge for the work involved, but in my experience clients are not impressed by the argument that one is not allowed to charge more or less than a specified sum.

I am well aware of the arguments about under-cutting, but they seem to me to be more applicable to conveyancing than they are to other business.

H. R. P. LLOYD.

Monmouth.

Sir,—"Escrow" asks what is wrong. Might I suggest that there is nothing wrong except his implicit assumption that the average client complains of costs. His supposition that most of the work of a busy suburban solicitor can be done in counsel's chambers is, with respect, out of this world.

The question at issue is whether costs are justified by the work involved. There is a great deal more to practical conveyancing than deducing and investigating title. In the labyrinths of that fact lies the answer.

In my experience, the ordinary person is half afraid of solicitors, dry, remote and austere creatures. We rarely get complaints perhaps because our clients are in constant attendance at the office where they are welcomed and realise what is done for them.

I think Mr. Mursell has put his finger on part of the trouble. Some solicitors are extraordinarily dilatory, casual and unavailable. I am not surprised they get complaints. I often wonder how they get any work. I also agree with Mr. Betts. No disbursements at all appear on our bills. Incidentally, we have just finished the sale of a business, after much trouble. Our costs were £45. Agent's charges £225 17s. If conveyancing costs are to be slashed, I shall become a suburban shopkeeper. I know what they make and with less trouble.

SUBURBAN SOLICITOR.

Preparation of Draft Contracts

Sir,—Some solicitors, who apparently have large numbers of business contracts, send a draft contract on duplicating paper, produced, of course, on a duplicating machine. It is extremely difficult to amend these contracts as such paper is, of course, not suitable for writing. Cannot anything be done to make all solicitors either use good, printed paper, as many large firms do, or use proper draft paper on which one can write?

N. PRIMHAK.

London, W.C.1.

Elephant's Ears

Sir,—N.P. is lucky to have been able to use the formula "Please sign the deed where we have marked your name in pencil . . ." [*ante*, p. 752]. As a very young solicitor, I used these words and back came the deed correctly executed *in pencil!* Since then I have adopted the wording "Please sign the deed where your initials are pencilled . . ."

T. CHARLES BRYANT.

Bristol.

Advancing the Profession

Sir,—In his recent letter your correspondent, Mr. A. J. Newsome, made the interesting proposal that The Law Society might run a benevolent scheme for members of the profession. I would remind him, however, that the Solicitors' Benevolent Association has, in fact, been running such a scheme for close on a hundred years. This Association is managed by a board of directors consisting of solicitors from all parts of England and

Wales. It is at present disbursing financial assistance to necessitous solicitors and their dependants to a total amount exceeding £30,000 a year. In many cases the grants supplement what is already provided by the Welfare State.

An official scheme based on contracting in or out would seem a poor substitute for a well-tried voluntary organisation inspired to continue the great work started by its founder. The Law Society in its wisdom seems to have recognised this and, instead of running a scheme of its own, has always been a generous supporter of the Association, and successive presidents have commended it to the profession.

Although there are approximately 25,000 solicitors on the Roll, the membership of the Association has only just reached 8,000. Bearing in mind the splendid work done by the Solicitors' Benevolent Association for the profession, all must agree that the present membership is far too low, and it is to be hoped that after reading this letter those solicitors who have not yet joined will feel the urge to do so.

B. S. PELL,
Chairman,
Solicitors' Benevolent Association.

London, E.C.4.

BOOKS RECEIVED

How to Live 365 Days a Year. By JOHN A. SCHINDLER, M.D., Chairman, Department of Medicine, The Monroe Clinic, Monroe, Wisconsin. pp. xxviii and (with Index) 222. 1955. Blackpool: A. Thomas & Co. £1 1s. net.

"Current Law" Income Tax Acts Service ["Clitas"]. Release 26, October, 1955. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

Fundamental Rights in India. By ALAN GLEDHILL, M.A., I.C.S. (Retd.), Professor in Oriental Laws at the School of Oriental and African Studies, University of London. pp. xvi and (with Index) 134. 1955. London: Stevens & Sons, Ltd. £1 5s. net.

Oke's Magisterial Formulist. Third (Cumulative) Noter-up to Fourteenth Edition. By J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. pp. xi and 60. 1955. London: Butterworth & Co. (Publishers), Ltd.; Shaw and Sons, Ltd. 12s. 6d. net.

Evidence and Procedure in Magistrates' Courts. Second Edition. By WILLIAM SHAW, M.A., formerly Clerk to the Justices for the City of Manchester. pp. xi and (with Index) 115. 1955. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Executorships and Trusts. Supplement to the Second Edition. By G. E. M. JENKINS, LL.B. (Lond.). pp. vi and 24. 1955. London: Sir Isaac Pitman & Sons, Ltd. 4s. net.

The Proof of Guilt. A Study of the English Criminal Trial. By GLANVILLE WILLIAMS, LL.D., of the Middle Temple, Barrister-at-Law, Fellow of Jesus College, Cambridge. pp. viii and 294. Published under the auspices of The Hamlyn Trust. 1955. London: Stevens & Sons, Ltd. 17s. 6d. net.

Law and Practice of Building Contracts including Architects and Surveyors. By DONALD KEATING, B.A., of Lincoln's Inn and the South-Eastern Circuit, Barrister-at-Law. With a glossary of building terms by PAUL BADCOCK, F.R.I.B.A. pp. xliv and (with Index) 349. 1955. London: Sweet and Maxwell, Ltd. £2 10s. net.

The Lawyer's Remembrancer and Pocket Book 1956. By ARTHUR POWELL, K.C. Revised and Edited by J. W. WHITLOCK, M.A., LL.B., assisted by S. H. W. PARTRIDGE, M.A. pp. (with Index) 356. 1955. London: Butterworth & Co. (Publishers), Ltd. 13s. 6d. net.

The Union of South Africa. The British Commonwealth (the development of its laws and constitutions), vol. 5. By GILBERT W. F. DOLD, M.A., B.C.L., LL.B., of the Middle Temple, Barrister-at-Law, and C. P. JOUBERT, B.A., LL.D. pp. xx and (with Index) 478. 1955. London: Stevens & Sons, Ltd. £2 15s. net.

Dictionary of Legal Terms, Spanish-English and English-Spanish. By LOUIS A. ROBB. pp. x and 228. 1955. London: Chapman & Hall, Ltd. £3 4s. net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

FACTORY: DANGEROUS MACHINERY: FENCING: ACCIDENT TO WORKMAN WHILE CLEANING MACHINE IN MOTION

Williams *v.* Sykes & Harrison, Ltd.

Singleton, Hodson and Morris, L.JJ. 25th March, 1955

Appeal from Oliver, J.

The Factories Act, 1937, provides by s. 14 (1): "Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced." The plaintiff was employed by the defendants in their factory to operate and clean a sand preparation plant. Sand was carried along an electrically driven conveyor belt, over a headroller and into a suction fan. The fan was fenced, but there was no fencing of the nip between the conveyor belt and the roller. The plant was normally cleaned while the parts were stationary, but one evening, after work had ceased and the foreman had left, the plaintiff switched on the current and began to clean the plant with the machinery in motion and in doing so caught his hand between the roller and the belt and suffered injuries. The trial judge held that the defendants were in breach of their statutory duty to fence under s. 14 (1) but that the plaintiff had been guilty of contributory negligence; and he apportioned the damages equally between them. The defendants appealed.

SINGLETON, L.J., said that the defendants raised three points: (1) that this was not a dangerous part of machinery; (2) that the absence of a guard did not cause or contribute to the accident, which was due to the deliberate act of the plaintiff himself; (3) that the defendants' fault was much less than that of the plaintiff and that the proportionate liability ought to be materially altered. On the first point, the best guide was the judgment of Wills, J., in *Hindle* v. *Birtwistle* [1897] 1 Q.B. 192, where it was said that machinery was dangerous if danger might be reasonably anticipated from its use without protection, the contingency of carelessness on the part of the workman being taken into consideration. Applying that test, the junction of the roller and the belt must be considered as dangerous. The question of causation was more difficult. If there had been a guard, the plaintiff would have moved it if he had decided to clean the plant; but the accident was the very thing which the section was designed to prevent. Lord Goddard, C.J., in *Roberts* v. *Dorman Long & Co., Ltd.* [1953] 1 W.L.R. 942; 97 SOL. J. 487, had said that when an employer had failed to provide a safeguard, it was no answer to say that the workman would not have used it in any case. It was difficult to say that the lack of a guard and the act of the plaintiff were not so "mixed up" that the lack of a guard could not be regarded as part of the cause of the accident. On the last point, much greater responsibility rested on the plaintiff than on the defendants and, having regard to the course taken in *Stapley* v. *Gypsum Mines, Ltd.* [1953] A.C. 663; 97 SOL. J. 486, the defendants' proportion must be reduced to 20 per cent.

HODSON and MORRIS, L.JJ., agreed. Appeal allowed in part.

APPEARANCES: *F. W. Beney*, Q.C., and *A. Rankin* (*Cardew-Smith & Ross*, for *Geoffrey Warhurst & Co.*, Manchester); *J. Thompson*, Q.C., and *G. Rees* (*W. H. Thompson*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1180

FACTORY: TRANSMISSION MACHINERY: UNFENCED PULLEY NINE FEET ABOVE GROUND: WHETHER AS SAFE AS IF FENCED

Hodkinson *v* H. Wallwork & Co., Ltd.

Singleton, Jenkins and Parker, L.JJ. 5th October, 1955

Appeal from Havers, J.

The Factories Act, 1937, provides by s. 13 (1): "Every part of the transmission machinery shall be securely fenced unless it is in such a position or of such construction as to be as safe for every person employed or working on the premises as it would be if fenced." The plaintiff, an employee of the defendant company in their factory, sustained injuries in respect of which he claimed damages, alleging a breach by the defendants of their duty under s. 13 of the Factories Act, 1937, to fence transmission machinery at which he was working. The machine in question, called a "wheelabrator," was electrically powered and used to clean metal castings and forgings. On the day in question the machine suddenly stopped owing to the wire ropes used in the transmission slipping off the two pulleys, which were 9 feet high from the ground and were unfenced. The established practice in the factory when such breakdown occurred was, as the plaintiff knew, to summon men from the maintenance staff to put matters right. The plaintiff, however, instead of waiting for the maintenance men, elected to do the work himself, obtained a ladder and mounted to the pulleys, leaving the electric current still on. In consequence, when he was replacing the ropes the machine started to work and his left hand was crushed between a rope and the pulley. The trial judge held that the defendants were in breach of their statutory duty to fence under s. 13, but he also held the plaintiff equally to blame. The defendants appealed, contending that the ropes and pulleys being 9 feet from the ground were in such a position as to be as safe for persons working on the premises as they would be if fenced, and there was therefore no breach of s. 13. Further, that if there was a breach it was not a cause of the accident.

SINGLETON, L.J., said that the defendants' first submission was that there had been no breach of s. 13 (1) because the pulleys, being 9 feet up, were in such a position as to be as safe as they would be if securely fenced. As to that, no doubt the risk was less at 9 feet than at 5 feet up, but it could not be said that the machinery was as safe as if fenced. The first contention failed. Secondly, it was said that if there was a breach, it was not the cause of the accident. If there had been a guard over the pulleys, it would have been a warning or deterrent; the plaintiff might well have decided to leave the pulley alone. The accident was of the very kind which the Act sought to prevent, and in such a case the court would be slow to say that the breach of duty had nothing to do with the accident. Thirdly, the defendants contended that the plaintiff's responsibility ought to be assessed at much more than 50 per cent. As to that, it was an accident which the defendants would not have expected to arise from their breach of duty so long as the plaintiff kept to his proper place of work; instead of that, he had acted in defiance of established practice, and was much more to blame than the defendants. He ought to bear 90 per cent. of the responsibility.

JENKINS and PARKER, L.JJ., agreed. Appeal allowed in part.

APPEARANCES: *D. Brabin*, Q.C., and *C. Elliott* (*L. Bingham and Co.*, for *James Chapman & Co.*, Manchester); *F. Atkinson*, Q.C., and *P. Curtis* (*C. Ellison*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1195

FACTORY: INJURIOUS FUMES: COKE BOILER ROOM NOT WORKROOM

Brophy *v.* J. C. Bradfield & Co., Ltd.

Singleton, Jenkins and Parker, L.JJ. 6th October, 1955

Appeal from Glyn-Jones, J.

The Factories Act, 1937, provides by s. 4: "Ventilation. (1) Effective and suitable provision shall be made for securing and maintaining by the circulation of fresh air in each workroom the adequate ventilation of the room, and for rendering harmless, so far as practicable, all fumes, dust and other impurities that may be injurious to health generated in the course of any process or work carried on in the factory." By s. 47: "Removal of dust or fumes. (1) In every factory in which, in connection with any process carried on, there is given off any dust or fume or other impurity of such a character and to such extent as to be likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practicable measures shall be taken to protect the persons employed against inhalation of the dust or fume or other impurity and to prevent its accumulating in any workroom, and in particular, where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained." The plaintiff's husband, Brophy, employed as a motor-lorry driver by the defendants, was found dead in the boiler room of the defendants' factory and the plaintiff claimed damages, alleging, *inter alia*, that the defendants were in breach of their statutory duty under ss. 4 (1) and 47 (1), to provide adequate ventilation and to take proper measures for the removal of injurious fumes. The defendants, manufacturers of tents and canvas goods, carried on business in a warehouse in Liverpool. Those premises had an entrance from the main road. Inside there was a lobby, with steps down to the basement, where there was a boiler room divided into two parts, one of which contained the boiler, the other being used for the stowage of coke to be used in the boiler. On Sunday morning, 20th January, 1952, Brophy was found dead on the floor of the boiler room, and it was admitted by the defence that he had died as the result of inhaling carbon monoxide fumes from the boiler. The evidence showed that he had returned with his lorry to the warehouse late on the Saturday night. Evidence was given for the defendants that on the Saturday afternoon, when work ceased in the factory, Robertson, the employee who had charge of the boiler, had stoked it up, closed the furnace door, pushed the damper in and according to practice had left the boiler room door open. When Brophy was found, the furnace door was open and the boiler room door partly closed. On this evidence, Glyn-Jones, J., drew the inference that Brophy had gone into the boiler room with the idea of having a sleep, had opened the furnace door and had been overcome by the fumes. The boiler was a coke-burning boiler for heating purposes and did not raise steam for any factory process. Glyn-Jones, J., rejected the plaintiff's claims under the Act and at common law. The plaintiff appealed.

SINGLETON, L.J., said that the boiler room was not a "workroom" within the meaning of s. 4 (1), as it merely provided heating; nor were the fumes "generated in the course of any process or work carried on at the factory." Further, it could not be said that "suitable provision" had not been made, when the boiler had existed for twenty-five years without any trouble with such ventilation as there was from the door above and up through the boiler flue. For the same reasons there had been no breach of s. 47 (1). As to the claim at common law, if a man went to a part of a factory where he had no business and interfered with the boiler, there could hardly be an onus on the defendants to explain the accident. If there was such an onus, the case was met by the fact that the boiler had worked satisfactorily for twenty-five years. It was a most unfortunate accident, but in the absence of expert evidence to the effect that the boiler should not have been so sited, the case against the defendants failed.

JENKINS and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *E. Wooll*, Q.C., and *E. E. Youds* (*Silverman and Livermore*, Liverpool); *D. J. Brabin*, Q.C., and *R. S. Nicklin* (*Weightman, Pedder & Co.*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1148

MASTER AND SERVANT: FULL-TIME HIRE OF LORRY AND DRIVER: INJURY TO DRIVER DUE TO HIRERS' NEGLIGENCE

O'Reilly *v.* Imperial Chemical Industries, Ltd.

Singleton, Jenkins and Parker, L.JJ. 13th October, 1955

Appeal from Oliver, J. ([1955] 1 W.L.R. 839; *ante*, p. 492).

The plaintiff was a lorry driver employed by British Road Services, who paid him his wages and had the sole right of dismissing him. Over a long period of years he had been engaged in carrying loads under the control of the defendants between their various depots. The loading and unloading of his lorry was done under the supervision of the defendants, who supplied the necessary equipment, but the plaintiff had control of the actual stowing of the load upon his lorry. The plaintiff's lorry was marked with the defendants' initials, and there was no indication of its true ownership. On 1st January, 1953, while unloading his lorry at one of the defendants' depots, the plaintiff was injured through the unsafe system of work of the defendants.

In an action by the plaintiff for damages for negligence he alleged that there existed between himself and the defendants a relationship of employer and employee *pro hac vice*. Oliver, J., gave judgment for the plaintiff. The defendants appealed.

PARKER, L.J., said that he agreed with Oliver, J., that the method of unloading was unsafe. If the duty owed by the defendants to the plaintiff was that of invitor to invitee, he must fail, as he was well aware of the danger; but if the plaintiff had become a servant of the defendants, they had plainly failed in their duty of care towards him. The judge had found that the plaintiff, though always in the general employment of British Road Services, on the facts became the servant of the defendants at the moment of unloading. That such a situation could arise was shown by the *Mersey Docks* case [1947] A.C.1, which had not been cited below. The observations in that case showed that if a workman chose to sue not his general employers, but the person whom he said temporarily owed him a duty, there was a considerable burden on him to show that the defendants owed that duty; Lord Simonds had said that the test could only be satisfied if the temporary "employer" could direct not only what the workman should do but also how he was to do it. Having regard to the evidence, it could not be said that the test laid down by the House of Lords was satisfied. It was suggested that at some undefined moment of arriving at the defendants' premises the plaintiff became their servant temporarily, and that when unloading had ceased he reverted to the service of British Road Services. That did not satisfy the test laid down. The appeal should be allowed.

JENKINS and SINGLETON, L.JJ., agreed. Appeal allowed.

APPEARANCES: *R. H. Forrest*, Q.C., and *G. Clover* (*J. W. Ridsdale*); *H. I. Nelson*, Q.C., and *C. M. W. Elliott* (*Fielding and Fernihough*, Bolton).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1155

BUILDING: R.I.B.A. CONTRACT: RESPONSIBILITY OF ARCHITECT TO BUILDING OWNER FOR DEFECTS IN HOUSE

Cotton *v.* Wallis

Denning, Hodson and Morris, L.JJ. 17th October, 1955

Appeal from Epsom County Court.

The defendant entered into a contract with a builder, in the standard form issued by the Royal Institute of British Architects, for the construction of a house at the price of £1,910 (which was admittedly low), the plaintiff being nominated as the architect. The contract provided, *inter alia*, (*a*) that the contractor should complete the works in accordance with the directions and to the reasonable satisfaction of the architect; (*b*) that defects or faults appearing within the defects liability period should on the architect's instructions be made good by the contractor, and (*c*) that on the expiry of the defects liability period or on the making good of defects the architect should issue a final certificate. The specification issued under the contract required that the materials and workmanship were to be the best of their respective kinds and to the full satisfaction of the architect, who had liberty to reject. At the end of the defects liability period the plaintiff issued a final certificate. Some two years after the completion of the house, the plaintiff brought an action claiming a sum of money as balance of fees and expenses owing to him; the defendant counter-claimed for damages, alleging that the plaintiff had not exercised due skill and care in supervising the work and ensuring that the house was constructed with proper materials and good workmanship. The county court judge dismissed both claim and counter-claim. On the counter-claim he found that, while there were a number of items of workmanship and material which were not as good as they might have been, and while another architect might have required a higher standard, the house was being "built down to a price," so that the builder could not be expected to execute the work in a perfect manner; he held that the passing of the defects did not amount to negligence or breach of duty on the part of the plaintiff. The defendant appealed.

DENNING, L.J., dissenting, said that as the contract and specification required the best work and materials, the plaintiff had failed in his duty to the defendant in passing shoddy work. The plaintiff had no dispensing power and should have held up the final certificate until all the defects had been made good. It did not matter that the price was a low one; the plaintiff should have seen that the contract had been properly carried out.

HODSON, L.J., said that the judge had not misdirected himself or regarded the plaintiff as having a dispensing power. The house was to be inexpensive and built down to a price, and it could not be said that the judge was wrong in taking the view that in those circumstances there must be some tolerance. The question of the adequacy of the work, provided that the architect used his skill and acted reasonably, was a matter for the judge, coming within the limits of questions of degree which were in his province. The judge had not come to the conclusion that the plaintiff had failed in his duty. The appeal should be dismissed.

MORRIS, L.J., delivered a similar judgment. Appeal dismissed.

APPEARANCES: *F. Hallis* (*Gard, Lyell & Co.*, for *Theodore Bell, Cotton & Curtis*, Sutton, Surrey); *S. Stewart* (*Gregsons*).

[Reported by F. R DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1168

LANDLORD AND TENANT ACT, 1954: GRANT OF NEW TENANCY: COURT'S DISCRETION TO CONSIDER "ALL THE CIRCUMSTANCES"

Upsons, Ltd. *v.* E. Robins, Ltd.

Denning, Hodson and Morris, L.JJ. 18th October, 1955

Appeal from Southport County Court.

Section 33 of the Landlord and Tenant Act, 1954, provides that "where on an application under this Part of this Act the court makes an order for the grant of a new tenancy, the new tenancy . . . shall be such a tenancy as may be determined by the court to be reasonable in all the circumstances . . ." The tenants (a large and powerful company) of shop premises applied to the county court under the Act of 1954 for the grant of a new fourteen-year tenancy on the expiry of their current tenancy. The landlords, who had only one shop, which there was a real risk they might have to leave, purchased the premises in question in November, 1950, and intended to occupy them on the termination of the current tenancy for the purpose of carrying on their own business therein. They were unable to establish any right to oppose the grant of a new tenancy on the ground, under s. 30 (1) (*g*), that they intended to occupy the premises for the purposes of their own business because the period during which they had been the landlords was two months short of the five-year period required by s. 30 (*2*) to entitle landlords to rely on para. (*g*). The county court judge, exercising his discretion under s. 33 in determining the new tenancy, had regard, *inter alia*, to the circumstance that the landlords desired to occupy the premises for their own business purposes and had just failed to establish that ground of opposition as of right, and granted the tenants a new tenancy for one year only. The tenants appealed.

DENNING, L.J., said that he could not accede to the argument for the tenants that in view of the provisions of ss. 30 and 31, the judge ought to have disregarded the fact that the landlords required the premises for their own business purposes in determining the duration of the new lease. The words "in all the circumstances" in s. 33 were amply wide enough to cover the present situation, and there was no reason why they should be cut down by reference to ss. 30 (1), (2) and 31 (2), which concerned rights and did not affect the scope of the discretion under s. 33. The judge was entitled to have regard to the fact that the landlords required the premises for their own purposes; and he was also entitled to consider, as he had done, hardship, the fact that the tenants were a large concern and the landlords had only one shop, and the fact that the landlords might have to leave their present premises. He would dismiss the appeal.

HODSON, L.J., agreeing, said that because the landlord failed (as this landlord had done) to establish any right under s. 30 (1) to oppose a new tenancy, it did not follow that he was disentitled to rely on any of those matters which might be put forward as grounds, in so far as he could, in order to give the court the circumstances which were to be considered in deciding the terms of the tenancy—for the landlords' desire to occupy the premises themselves was obviously a relevant circumstance. His lordship did not think that the argument based on s. 31 (2) enabled the tenants to displace the plain meaning of the words of s. 33, which showed that all the circumstances of the case were proper to be taken into consideration in determining the duration of the new lease.

MORRIS, L.J., also agreed. Appeal dismissed.

APPEARANCES: *Lionel Blundell* (*Waltons & Co.*); *H. S. L. Rigg* (*Pritchard, Englefield & Co.*, for *W. & R. Hodge & Halsall*, Southport).

[Reported by Miss M. M. HILL, Barrister-at-Law] [3 W.L.R. 584

AGRICULTURAL HOLDINGS ACT, 1948: CONFLICT BETWEEN CONTRACTUAL AGREEMENT AND INCORPORATED STATUTORY CLAUSE

Burden *v.* Hannaford

Denning, Hodson and Morris, L.JJ. 20th October, 1955

Appeal from Totnes County Court on a special case stated by an arbitrator under s. 77 of the Agricultural Holdings Act, 1948.

The terms of the lease of an agricultural holding provided that the tenant should not be liable to the landlord on quitting for dilapidations for hedges on the farm, nor entitled to compensation for work done on hedges during the tenancy. By the operation of s. 6 (1) of the Agricultural Holdings Act, 1948, and the regulations made thereunder, a statutory clause was deemed to be incorporated in the lease, which imposed on the tenant the liability for the repair of hedges. The tenancy was brought to an end at the instance of the landlord, who claimed that, as from the date when the Act of 1948 came into force, he was entitled to be paid compensation for the tenant's failure to comply with the requirements of the statutory clause to repair the hedges.

DENNING, L.J., said that the short question was what was to happen when the agreed contractual terms of the tenancy came into conflict with the model clauses incorporated by statute into the contract. The statutory clause said that the tenant was to leave the fences in good repair, but the contractual clause said that he was not liable for dilapidations to the fences. Which was to prevail? Reading s. 6 as a whole, his lordship thought that if any conflict appeared between a statutory and a contractual clause, it was the contractual clause which must be given effect. If modifications were necessary to make the two run together, modifications must be made in the statutory clause, subject to the power of either party to apply to an arbitrator under subs. (2) of s. 6 to vary the contractual clause so as to bring it into conformity with the statutory clause. Accordingly, in the present case, the contractual clause held good and the tenant was exempted from liability. He would dismiss the appeal.

HODSON, L.J., agreeing, said that the true position was that the incorporated regulation and the contractual agreement must be read together; and when one found by so doing the remarkable result that the tenant was, in fact, exonerated by the contractual clause, that was the necessary result of reading the regulation and the contractual clause together. Subsection (2) of s. 6 contemplated the agreement modifying the regulation; it contemplated both subject-matters being construed together. The effect of that construction was that the tenant here was exonerated.

MORRIS, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *G. R. F. Morris* (*Church Rendell*, for *Kellock and Cornish-Bowden*, Totnes); *D. M. Scott* (*Collyer-Bristow & Co.*, for *Rossetti & Peppercorn*, Kingsbridge).

[Reported by Miss M. M. HILL, Barrister-at-Law] [3 W.L.R. 606

BUILDING: SAFETY REGULATIONS: FALL OF WORKMAN THROUGH FRAGILE ROOF WHILE TAKING PRELIMINARY MEASUREMENTS

Sumner *v.* R. L. Priestly, Ltd.

Singleton, Jenkins and Parker, L.JJ. 21st October, 1955

Appeal from Oliver, J.

The Building (Safety, Health and Welfare) Regulations, 1948, provide by reg. 2 (1): "These regulations shall apply to the following operations . . . the construction, structural alteration, repair or maintenance of a building, and the preparation for and laying the foundation of an intended building." By reg. 31 (3), where work is being done on or near roofs or ceilings covered with fragile materials through which a person is liable to fall a distance of more than ten feet: ". . . (*b*) prominent notices stating that the coverings are fragile shall be affixed at the approaches thereto." A workman employed by the defendants went up a ladder to the roof of the defendants' factory in order to take a "profile" of the dimensions of the gutter which needed renewing. In some unexplained way he slipped and fell through the asbestos roof of a lower building, and was killed. His widow sued the defendants for damages under Lord Campbell's Act, alleging, *inter alia*, that the defendants were in breach of their statutory duty under reg. 31 (3) (*b*), in that they had failed to give prominent notice of the fragile character of the roof. Oliver, J., dismissed the action. The plaintiff appealed.

SINGLETON, L.J., said that the regulations were expressed to apply to the preparation for laying the foundation of an intended building, but not to the preparation for construction, alteration, repair or maintenance. Oliver, J., described the activities of the deceased as "gaining information, making preparation for the purpose of being able to order an item belonging to the building," and held that the regulations did not apply. The case was very largely a question of fact. It could not properly be said that the deceased had been engaged on work of repair or maintenance. The decision below was right, and the appeal should be dismissed.

JENKINS and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Leonard Caplan*, Q.C., and *F. E. C. Grundy* (*Rowley, Ashworth & Co.*); *M. Jukes*, Q.C., and *P. H. Ripman* (*Clifford-Turner & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1202

CHANCERY DIVISION

LANDLORD AND TENANT ACT, 1954: SUB-LETTING OF FLATS NOT "BUSINESS"

Bagettes, Ltd. *v.* G. P. Estates, Ltd.

Wynn Parry, J. 26th October, 1955

Adjourned summons.

The defendants held the residue of a leasehold term expiring on 25th March, 1955, of Nos. 99, 101 and 103 Gloucester Place, London, W.1, of which the plaintiffs were the landlords, the premises being divided into thirteen flats, one of which was in the basement. Accommodation was also provided in the basement for the storage of cleaning materials, surplus articles of furniture, and other such articles. Fuel was also stored in the basement premises, where the boiler rooms were situate. The defendants asked for a new tenancy of the whole of the premises; the plaintiffs refused to accede to that request, and in consequence an application had been made by the defendants under the Landlord and Tenant Act, 1954, asking for an order under s. 24 of the Act. The plaintiffs contended that the defendants had not, on the facts, a tenancy to which Pt. II of the Act applied; and by the present summons they asked the court to determine whether, on the true construction of the Landlord and Tenant Act, 1954, the defendants had a tenancy of 99, 101 and 103 Gloucester Place to which Pt. II of the Act applied.

WYNN PARRY, J., said that the defendants contended that, in order that Pt. II of the Act should apply in favour of the defendants, it was only necessary to find that some part of the premises comprised in the lease was in their occupation, however small that part may be; and that the question whether or not the tenants could carry on their business in that part was irrelevant. The part of the premises, however small, which was in the occupation of the tenant had to constitute "the holding" (s. 23 (3)), and once it was shown that a holding existed, the tenant was entitled to have, and the court was bound to order, the grant of a new tenancy of that holding. Applying that principle to this case, the holding in respect of which the defendants could ask for a grant would comprise at any rate the rooms in the basement, used for storage, and the stairs, landings and passageways. It was manifest that on such a holding, even including flats and the rooms in the basement which were vacant, the defendants could not carry on the business which, up to the expiration of their contractual tenancy, they were carrying on, namely, the business of letting flats. That construction must produce an absurdity. He recoiled at making an order which must result in an absurdity, but he did not think he need make such an order. The heading of Pt. II of the Act was: "Security for Business, Professional and other Tenants," and the scheme of this Part of the Act was that, where a man occupied as tenant premises for business or professional purposes, he would not necessarily have to leave against his will at the end of his tenancy; but that, subject to the terms and conditions contained in the Act, he should have the right to remain as tenant of those premises for the purpose of continuing to carry on his business. It was enough to say that the business of sub-letting parts of premises as flats with a view to making a profit from the rentals was not a business in respect of which the person carrying it on was entitled to the form of protection, namely, security of tenure, which was the subject of Pt. II of the Act. He would declare that, on the true construction of the Act, this was not a tenancy to which Pt. II of the Act applied. Declaration accordingly.

APPEARANCES: *L. A. Blundell* (*Harris, Chetham & Co.*); *Desmond Ackner* (*Clarke, Square & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [3 W.L.R. 602

QUEEN'S BENCH DIVISION

TRESPASSER: FALL OF TRESPASSING CHILD INTO STREET EXCAVATION: WHETHER ALLUREMENT

Perry *v.* Thomas Wrigley, Ltd., and Another

Oliver, J. 25th July, 1955

Action.

Contractors engaged on repairing a road in the occupation of a corporation dug a trench and a deep pit in the road and placed a barrier round them. During daylight the plaintiff, a boy of eight, who knew that he should not go beyond the barrier, did so, and fell into the pit. In the action he claimed damages against both the contractors and the corporation.

OLIVER, J., said that the plaintiff was a trespasser; the case against the corporation fell within the decision in *Robert Addie & Sons (Collieries), Ltd.* v. *Dumbreck* [1929] A.C. 358, and they were not liable. As to the contractors, in the absence of authority there would have been a difficulty in saying that they owed a higher duty to a trespasser than the corporation, but it had been said that *Davis* v. *St. Mary's Demolition and Excavation Co., Ltd.* [1954] 1 W.L.R. 592; 98 SOL. J. 217, supported the view that the owner was not and the contractor was liable for accidents contributed to by allurements. Assuming that that contention was right, the question was whether the contractors had put an allurement on the ground. An allurement was something attractive but dangerous, although not apparently so—something insidious. A hole in the ground could not be insidious; its danger was not concealed; there was nothing alluring about it. There must be judgment for both defendants. Action dismissed.

APPEARANCES: *A. Karmel*, Q.C., and *P. Curtis* (*Bostock, Yates & Chronnell*, Ashton under Lyne); *F. Atkinson*, Q.C., and *J. D. Cantley*, Q.C. (*A. W. Mawer & Co.*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1164

DUTY OF TRUSTEES TO INFORM CESTUI QUE TRUST OF INTEREST IN SETTLEMENT: DUTY TO PAY INCOME TO JOINT TENANT BEFORE SEVERANCE: DUTY TO PAY CAPITAL AND INCOME WITHOUT DEMAND

Hawkesley *v.* May and Others

Havers, J. 6th October, 1955

Action.

A settled fund was held by trustees upon trusts under which on attaining the age of twenty-one the plaintiff and his younger sister became absolutely entitled as joint tenants. Upon the plaintiff's coming of age the trustees, having been advised by their solicitor that until both joint tenants attained the age of twenty-one or until severance by the plaintiff it was their duty to retain the capital and re-invest the income, took no steps to transfer to the plaintiff his share of the capital or to pay him the income therefrom, but retained the whole of the fund in their own hands and accumulated the income. After the plaintiff's sister came of age she severed the joint tenancy and her share of the capital was transferred to her, but the trustees continued to hold the plaintiff's share of the capital and to accumulate the income until the following year, when the whole amount due to the plaintiff under the trust was transferred to trustees of a voluntary settlement entered into by the plaintiff. The plaintiff was at all material times in ignorance of his rights under the settlement and at no time did he demand payment from the trustees of either the capital of or income from his share. In the course of an action at common law subsequently brought by the plaintiff against the trustees and their solicitor claiming, *inter alia*, damages for conspiracy, the plaintiff alleged that, on his attaining the age of twenty-one: (1) he had become entitled to the income from his share of the trust funds and that it was the continuing duty of the trustees (2) to disclose to him that he had an interest in the capital and income of the trust funds; (3) to disclose to him that he had a legal right to sever the joint tenancy; (4) to pay to him the interest from his share of the trust fund without demand; and (5) to pay to him on severance his share of the capital, whether demanded or not.

HAVERS, J., said that on the plaintiff attaining the age of twenty-one he was entitled to the income of his share of the fund. His lordship referred to *Burrows* v. *Walls* (1885), 5 De G.M. & G. 233; *Brittlebank* v. *Goodwin* (1868), 5 L.R. Eq. 545; *In re Lewis* [1904] 2 Ch. 656; *In re Mackay* [1906] 1 Ch. 25; and *Low* v. *Bouverie* [1891] 3 Ch. 82, and said that so far as an executor was concerned he was bound by the decision in *In re Lewis* to hold that there was no duty upon him to give notice of the terms of the legacy to a legatee, but the position of an executor and a trustee was still not identical, and there was a distinction between a will, which was in a sense a public document, and a trust deed, to which the *cestui que trust* had no access, and in the absence of any authority to the contrary he declined to extend that doctrine to a trustee under an express trust. He held, therefore, that there was a duty upon the trustees to inform the plaintiff upon his attaining the age of twenty-one that he had an interest in the capital and interest of the trust funds. Not having handed over to the plaintiff on attaining the age of twenty-one the income to which he was entitled, it was the trustees' duty to explain to him that he was entitled to call for and have the interest paid to him, but, on the other hand, there was no duty on the trustees to give the plaintiff legal advice or to inform him of his right to sever, though they were bound to disclose on demand any document relating to the trust. His lordship considered *Wroe* v. *Seed* (1863), 4 Giff. 425, and held that it was the duty of the trustees to pay income of his share to the plaintiff upon attaining twenty-one without any demand by him, and also to pay the capital to the plaintiff and his sister upon the sister attaining the age of twenty-one, or after severance of their respective shares, to each of them without any demand by them. His lordship then reviewed the evidence and the correspondence, on which the allegations of conspiracy and fraud mainly turned, and having considered those issues, found that they were without foundation. His lordship found, further, that the breaches of trust committed by the trustees were not fraudulent and that neither of the defendant trustees had been a party or privy to any fraud or fraudulent breach of trust, and he held, therefore, that s. 19 (1) of the Limitation Act, 1939, did not apply and the plaintiff's claim in respect of breaches of trust was barred by s. 19 (2) of the Limitation Act, 1939. His lordship added that had it been necessary he would have wholly relieved the trustees of liability under s. 61 of the Trustee Act, 1925, as they had acted honestly and ought fairly to be excused. Judgment for the defendants.

APPEARANCES: *Neil Lawson*, Q.C., and *R. J. Parker* (*Ward, Bowie & Co.*); *Kenneth Diplock*, Q.C., and *Helenus Milmo* (*May, May & Deacon*); *Frank Whitworth* and *C. E. Watson-Taylor* (with them *H. V. Lloyd-Jones*, Q.C.) (*Tucker, Hussey & Clare*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 569

BASTARDY: APPLICATION FOR AFFILIATION ORDER BY NATIONAL ASSISTANCE BOARD

National Assistance Board *v.* Mitchell

Lord Goddard, C.J., Ormerod and Glyn-Jones, JJ.

14th October, 1955

Case stated by Woolwich stipendiary magistrate.

By s. 3 of the Bastardy Laws Amendment Act, 1872, a woman delivered of a bastard child may "at any time within twelve months from the birth of such child" apply for a summons to be served on the alleged father. The National Assistance Act, 1948, provides by s. 44 (2): "If no affiliation order is in force, the Board or local authority may within three years from the time when the assistance was given or accommodation provided make application to a court of summary jurisdiction having jurisdiction in the place where the mother of the child resides for a summons to be served under section three of the Bastardy Laws Amendment Act, 1872." In 1954 the National Assistance Board, having given financial assistance towards the maintenance of twin bastard children born in 1947, applied under s. 44 (2) of the National Assistance Act, 1948, for two summonses to be served under s. 3 of the Bastardy Laws Amendment Act, 1872, against the respondent, who was alleged to be the children's father. The mother had not obtained an affiliation order against the respondent and although he admitted paternity he at no time made any payment towards their maintenance. The magistrate refused to make an order on the ground, *inter alia*, that the Board could not be in a better position than the mother, who was precluded from obtaining an affiliation order as more than twelve months had elapsed since the births and the respondent had paid nothing towards the children's maintenance. The Board appealed.

LORD GODDARD, C.J., said that it had been laid down in *National Assistance Board* v. *Parkes* [1955] 1 Q.B. 486; *ante*, p. 540, that the right given to the Board under the Act of 1948 was a right independent of the mother's rights. If the Board were bound by the period of limitation applicable to the mother, there was no point in giving them three years from the time when assistance

was given to apply for a bastardy order. Provided that they applied within the three years, they were entitled to do so without reference to the time limit imposed on the mother.

ORMEROD and GLYN-JONES, JJ., agreed. Appeal allowed.

APPEARANCES: *Rodger Winn* (*Solicitor, National Assistance Board*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 591

ROAD TRAFFIC: PEDESTRIAN CROSSING: DUTY OF DRIVERS

Gibbons *v.* Kahl

Lord Goddard, C.J., Ormerod and Barry, JJ. 20th October, 1955

Case stated by Edmonton justices.

The driver of a trolleybus was approaching a pedestrian crossing when three children stepped on to the crossing. The driver gave a hand signal to slow down, brought his bus to a stop on the nearside of the road and waved the children across. The defendant, who was travelling in his motor car in the same direction as the bus, saw the bus driver's signal, but did not see the children on the crossing until they had passed in front of the bus. He failed to stop in time and hit one of the children. On a charge under reg. 4 of the Pedestrian Crossings Regulations, 1954, the justices being of the opinion that the facts raised some doubt whether the defendant negligently failed to accord precedence to foot passengers on the crossing, dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that the defendant failed to pull up in time so that in fact he did not give precedence to the people who were on the crossing at the time. If a vehicle was stationary at the crossing, and another vehicle came up on the offside of the first vehicle, it was no answer to say: "I did not know people were on that crossing." The answer was: "You must approach that crossing so that you can give precedence to people if they are there." *Leicester* v. *Pearson* [1952] 2 Q.B. 668, upon which it might be that the justices decided the present case, was a very special case. The metropolitan magistrate found not only that the accident took place because the driver of the vehicle had not seen the pedestrian who came on the crossing, but that he was not guilty of any negligence in not seeing him. The judgments ran entirely on the finding that there was no negligence to be attributed to the driver at all; therefore it followed from that that the court could not interfere with the finding. In the present case, as he approached the crossing, the defendant was guilty of no negligence, but when he got to the crossing he became under a duty to stop because the bus had stopped and, therefore, he should have realised that pedestrians were on the crossing. It was the duty of motorists to be able to stop before they reached the crossing unless they could see that there was nobody on the crossing. If there was a stationary vehicle on the nearside and the driver of another vehicle approaching from behind could not see whether there was anyone on the crossing, he ought to assume that there was because that was the reason that the vehicle on the nearside had stopped. At any rate, it was for such a driver to make certain that a person was not there. For those reasons, the case must be sent back to the justices with an intimation that an offence was proved.

ORMEROD and BARRY, JJ., delivered concurring judgments. Appeal allowed.

APPEARANCES: *Paul Wrightson* (*Solicitor, Metropolitan Police*); *D. Fairbairn* (*Avery, Son & Fairbairn*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 596

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: DESERTION: TERMINATION: WORDS SPOKEN AS RESULT OF DESERTED PARTY'S SENSE OF GRIEVANCE

Bevan *v.* Bevan

Lord Merriman, P., and Collingwood, J. 10th October, 1955

Appeal from an order of the stipendiary magistrate for the Petty Sessional Division of Swansea, made on the ground of desertion.

The parties were married in July, 1954, and the wife found from a very early stage that the husband was not truthful over money matters. They had been buying the furniture for their home on hire-purchase. The wife earned some £4 10s. a week, and gave her husband £3 towards the instalments. At the time of the parting these payments aggregated £64. Matters came to a head on 1st February, 1955, when the husband told his wife that he was leaving her, that his clothes were packed, and that the furniture was going back. In fact, he had spent the whole of the £64, which his wife had provided, upon his own pleasures, but the wife was not told that at the time; she discovered it later, after an interview between her husband and her father. The wife unsuccessfully tried to stop the husband leaving; and later that evening her father saw him, and found out about the furniture. She and her father and a cousin met the husband next day, and there was a scene during which the father tried to find out where the money had gone and which led to blows. The husband again refused the information on the following day, and a solicitor's letter was written to him. On 4th February, 1955, the husband came to the wife's parents' house, bringing the solicitor's letter with him. He showed no concern for her at all: all he did was to ask her if she was prepared to pay for the furniture all over again, the alternative to which was to send the furniture back. She was distressed and angry, and told him that she did not want to see him again, and wanted a divorce; and she added to that by making to hit him with a milk bottle, but was restrained from so doing. Some time later the husband wrote a letter to his wife, of which she said in evidence: "It did ask me to come back in a way. It started: 'Dear Glenys.' He said: 'If you don't answer this letter I shan't bother with you again' . . . I didn't answer the letter or do anything. I took out a summons." This she did on 16th April, 1955, alleging desertion by the husband and wilful neglect to provide reasonable maintenance for her. The matter came before the stipendiary magistrate on 26th April, 1955, and was adjourned. On 24th May, the wife was re-called by the court, said that she had been to see the probation officer, and added: "I have no desire now to return to my husband, even if the court is satisfied he genuinely wants me. He has done nothing to try and make it up to me—either over the money or the home." On 13th May, 1955, between the two hearings, the husband wrote a second letter to the wife in which he expressed regret and asked for another chance. The wife did not reply. The husband appealed against the magistrate's order for maintenance in favour of the wife.

COLLINGWOOD, J., said that there was clearly no explanation by the husband of his conduct on 4th February, 1955, nor any effort then to make things up. The magistrate's decision had been attacked on the ground that it ran counter to a passage in Lord Macmillan's judgment in *Pratt* v. *Pratt* [1939] A.C. 417, 420. As Willmer, J., had pointed out in *Church* v. *Church* [1952] P. 313, 317, that passage in the speech of Lord Macmillan was *obiter*, and was, in fact, in conflict with authorities in this country. His lordship read Willmer, J.'s quotation from the headnote in *Sifton* v. *Sifton* [1939] P. 221 and asked what the appellant husband had done to terminate the state of desertion which he had brought about on 1st February, 1955? He had failed to satisfy the magistrate that he had made a *bona fide* offer to return, and it was impossible, on the evidence, to say that it was not open to him to do so. It had been submitted that by her words and conduct the wife had exonerated the husband from making further efforts, and that his case was covered by *Barnett* v. *Barnett* [1955] P. 21 and *Fishburn* v. *Fishburn* [1955] P. 29. Those were cases where the door had been physically bolted against the spouse originally in desertion. In the present case the husband was not exonerated from the necessity of doing something to bring an end to the state of desertion which he had started merely because the wife, who was suffering from a deep sense of grievance, and to whom the husband had expressed no contrition, had said that she did not want to see him any more.

LORD MERRIMAN, P., concurred, emphasising that the case was not one in which the wife was entitled to take up an obdurate attitude and say that under no circumstances whatsoever would she return. Appeal dismissed.

APPEARANCES: *D. Rankin* (*Murray Napier & Co.*, for *Andrew, Thompson & Partners*, Swansea). The wife did not appear and was not represented.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 1142

The Queen has been pleased to approve the appointments of Mr. Justice V. R. BAIRAMIAN to be Senior Puisne Judge of the High Court of the Northern Region of Nigeria; Mr. Justice W. H. HURLEY and Mr. Justice J. A. SMITH to be Judges of the High Court of the Northern Region of Nigeria; and Mr. Justice H. M. S. BROWN, Mr. Justice G. F. DOVE-EDWIN, Mr. Justice H. S. PALMER and Mr. Justice L. N. MBANEFO, to be Judges of the High Court of the Eastern Region of Nigeria.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 1st November :—

Sudan (Special Payments).

Validation of Elections (No. 2).

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Agriculture (Improvement of Roads) Bill [H.C.] [2nd November.

Education (Scotland) Bill [H.L.] [3rd November.

To amend the Education (Scotland) Act, 1946, and certain other enactments relating to education in Scotland, and for purposes connected therewith.

Read Second Time :—

British Transport Commission Bill [H.C.] [3rd November.

Friendly Societies Bill [H.C.] [3rd November.

Therapeutic Substances Bill [H.L.] [1st November.

Read Third Time :—

Food and Drugs Bill [H.L.] [3rd November.

Gloucestershire County Council Bill [H.L.] [1st November.

Runcorn-Widnes Bridge Bill [H.L.] [1st November.

Swansea Corporation (Fairwood Common) Bill [H.L.] [1st November.

In Committee :—

Aliens' Employment Bill [H.C.] [3rd November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Finance Bill [H.C.] [31st October.

To increase certain taxes and otherwise to amend the law relating to the Public Revenue.

Housing Subsidies Bill [H.C.] [1st November.

To make provision with respect to contributions in connection with housing accommodation.

Valuation and Rating (Scotland) Bill [H.C.] [31st October.

To amend the law regarding valuation and rating in Scotland; to amend the provisions of the Local Government (Financial Provisions) (Scotland) Act, 1954, with respect to the payment of Exchequer grants to local authorities in Scotland and with respect to the apportionment of the expenditure of joint bodies among their constituent authorities; and for purposes connected with the matters aforesaid.

Read Second Time :—

Clean Air Bill [H.C.] [3rd November.

Dentists Bill [H.C.] [4th November.

Read Third Time :—

Leicester Corporation Bill [H.C.] [3rd November.

B. QUESTIONS

The ATTORNEY-GENERAL stated that in 1954 eighty-eight applications had been made for the Attorney-General's fiat for leave to appeal to the House of Lords from the Court of Criminal Appeal. [31st October.

MINOR OFFENCES (SUMMARY TRIAL)

Major LLOYD-GEORGE said that the recommendations of the Departmental Committee on the Summary Trial of Minor Offences were being carefully studied. He was not yet able to say when legislation would be introduced to give them effect. [31st October.

CERTIFICATES OF DISREPAIR

Mr. SUNCAN SANDYS said that up to 31st March, 1955, returns showed that 20,422 applications for certificates of disrepair under the Housing Repairs and Rents Act, 1954, had been made. Of these 18,486 had been granted, 1,089 refused and 182 withdrawn, leaving 665 awaiting decision. At the same date there had been 3,422 applications for revocation of certificates, 2,763 of which had been granted, 263 refused, and 1 withdrawn, leaving 395 awaiting decision. [31st October.

ADMINISTRATIVE TRIBUNALS (COMMITTEE OF INQUIRY)

The PRIME MINISTER stated that the Lord Chancellor had appointed a Committee with the following terms of reference :—

" To consider and make recommendations on :

(*a*) The constitution and working of tribunals other than the ordinary courts of law, constituted under any Act of Parliament by a Minister of the Crown or for the purposes of a Minister's functions.

(*b*) The working of such administrative procedures as include the holding of an inquiry or hearing by or on behalf of a Minister on an appeal or as the result of objections or representations, and in particular the procedure for the compulsory purchase of land."

Sir Oliver Franks had agreed to be chairman of the Committee and the names of the other members were as follows :—

The Lord Balfour of Burleigh, Mr. Roderic Bowen, M.P., Mr. J. C. Burman, Dame Florence Hancock, D.B.E., Mr. Douglas Johnston, M.P., Sir Geoffrey Stuart King, K.C.B., K.B.E., M.C., The Marquess of Linlithgow, M.C., Major John Morrison, M.P., Miss K. M. Oswald, The Right Hon. Lord Justice Parker, Mr. H. Wentworth Pritchard, The Hon. Charles Russell, Q.C., The Right Hon. The Lord Silkin, Mr. Alan Symons, and Professor Kenneth Wheare, C.M.G.

The Secretary of the Committee was Mr. J. Littlewood, of H.M. Treasury. [1st November.

DEVELOPMENT CHARGE CLAIMS (INTEREST)

Mr. DUNCAN SANDYS declined to arrange for interest to be paid on outstanding development charge claims as from 30th June last, when interest ceased, until claims had been repaid. Under the Town and Country Planning Act, 1954, interest was redeemed in every case from 1st July, 1948, so that those concerned would receive seven years' interest, although in few cases would it be as much as seven years since the development charge was paid. [1st November.

CORONERS' COURTS (JURIES)

Asked whether he was aware of the suffering caused where coroners' juries, often against the advice of the coroner, returned verdicts of manslaughter; that such verdicts had on occasions been criticised by the court in subsequent criminal prosecutions, and whether, in view of the waste of public money involved, he would consider making an investigation into the procedure at coroners' courts with special reference to the introduction of legislation to discontinue the jury system therein, Major LLOYD-GEORGE said that the law and practice of coroners had been the subject of a Departmental Committee in 1936. This had recommended the retention of the jury system for the limited classes of case in which the coroner was at present required by law to sit with a jury. He could hold out no hope of legislation on this subject. [1st November.

CROWN LAND TRUSTEES (CHAIRMANSHIP)

The PRIME MINISTER announced that Sir Malcolm Trustram Eve had been appointed to a vacant post as a Commissioner of Crown Lands with a view to his being appointed in due course Chairman of the proposed Board of Trustees for Crown Lands. The setting up of this Board would require legislation. [3rd November.

STATUTORY INSTRUMENTS

Act of Sederunt (Rules of Court Amendment No. 3) 1955. (S.I. 1955 No. 1656 (S. 138).)

Aden Colony (Amendment) Order, 1955. (S.I. 1955 No. 1654.) 8d.

Cocos Islands Order in Council, 1955. (S.I. 1955 No. 1642.) 5d.

Crowborough Water Order, 1955. (S.I. 1955 No. 1628.) 5d.

East African Territories (Air Transport) (Amendment) Order in Council, 1955. (S.I. 1955 No. 1651.)

European Coal and Steel Community Act (Commencement) Order, 1955. (S.I. 1955 No. 1640 (C. 10).)

Falkland Islands (Legislative Council) (Amendment) Order in Council, 1955. (S.I. 1955 No. 1650.)

Fylde Water Order, 1955 (S.I. 1955 No. 1629.)

Indiarubber Regulations, 1955. (S.I. 1955 No. 1626.)

Kenya Protectorate (Amendment) Order in Council, 1955. (S.I. 1955 No. 1652.)

London Traffic (Prescribed Routes) (Mitcham) Regulations, 1955. (S.I. 1955 No. 1630.)

Merchant Shipping (Confirmation of Legislation) (Aden) Order, 1955. (S.I. 1955 No. 1653.)

Merchant Shipping (Load Line Convention) (Various Countries) Order, 1955. (S.I. 1955 No. 1649.)

Muscat Order, 1955. (S.I. 1955 No. 1641.) 1s. 2d.

Retention of Cable under Highway (East Riding of Yorkshire) (No. 2) Order, 1955. (S.I. 1955 No. 1633.)

Retention of Cables, Main and Pipe under Highway (Lincolnshire —Parts of Lindsey) (No. 6) Order, 1955. (S.I. 1955 No. 1632.)

Savings Certificates (Amendment) Regulations, 1955. (S.I. 1955 No. 1636.)

Draft **Schools** (Scotland) Code, 1955. (S.I. 1955.) 8d.

Stopping up of Highways (Berkshire) (No. 5) Order, 1955. (S.I. 1955 No. 1619.)

Stopping up of Highways (Berkshire) (No. 6) Order, 1955. (S.I. 1955 No. 1620.)

Stopping up of Highways (Bradford) (No. 3) Order, 1955. (S.I. 1955 No. 1637.)

Stopping up of Highways (East Sussex) (No. 7) Order, 1955. (S.I. 1955 No. 1616.)

Stopping up of Highways (Glamorgan) (No. 1) Order, 1955. (S.I. 1955 No. 1635.)

Stopping up of Highways (Middlesex) (No. 10) Order, 1955. (S.I. 1955 No. 1615.)

Stopping up of Highways (Monmouthshire) (No. 1) Order, 1955 (S.I. 1955 No. 1623.)

Stopping up of Highways (Southampton) (No. 4) Order, 1955. (S.I. 1955 No. 1617.)

Stopping up of Highways (West Suffolk) (No. 2) Order, 1955. (S.I. 1955 No. 1618.)

Weedon—Atherstone—Brownhills Trunk Road (Watford Gap Bends Diversion) Order, 1955. (S.I. 1955 No. 1634.)

Witnesses' Allowances Regulations, 1955. (S.I. 1955 No. 1655 (L. 13).) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint Mr. JOHN CHARLES DUNDAS HARINGTON and Mr. RICHARD MICHAEL ARTHUR CHETWYND TALBOT to be Recorders of the Boroughs of New Windsor and Banbury respectively.

Mr. S. MOTTRAM, assistant solicitor to Middlesbrough Corporation, has been appointed senior assistant solicitor to Oldham Corporation.

Miscellaneous

HALL-MARKING LAWS

The President of the Board of Trade has invited Sir Leonard Stone, Vice-Chancellor of the County Palatine of Lancaster, to be chairman of a Departmental Committee to review the hall-marking laws, which invitation has been accepted. The composition of the committee and the exact terms of reference will be announced later.

A talk on the bringing of charges in connection with careless driving will be given by a lawyer in the B.B.C.'s Home Service on 16th November. A series of three talks by a barrister on legal problems affecting husbands and wives will be broadcast in Woman's Hour on 17th and 24th November and 1st December.

OBITUARY

MR. F. H. DAUNCEY

Mr. Frederick Herbert Dauncey, solicitor, of Newport, Mon., died on 30th October, aged 84. Said to be one of the oldest solicitors in Monmouthshire, Mr. Dauncey was the first full-time Registrar of the High Court at Newport. He was admitted in 1899.

CANON J. C. MAKINSON

Canon Joseph Crowther Makinson, solicitor, of Derby, has died, aged 71. He was admitted in 1906 and practised in Manchester.

CASES REPORTED IN VOL. 99

15th October to 12th November, 1955.

Lists covering all cases reported earlier this year appear in the Interim Index (to 25th June) and at p. 632, *ante* (2nd July to 20th August).

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